

**FILED**

SEP 25 2017

Clerk, U.S. District Court  
District Of Montana  
Billings

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

TRACY K. ORCUTT,

Petitioner,

vs.

STATE OF MONTANA; ATTORNEY  
GENERAL,

Respondents.

CV 16-155-BLG-SPW

ORDER ADOPTING  
FINDINGS AND  
RECOMMENDATIONS

Petitioner Tracy K. Orcutt, appearing pro se, seeks habeas corpus relief pursuant to 28 U.S.C. §2254. Orcutt is a state prisoner challenging his convictions for Criminal Production or Manufacture of Dangerous Drugs and Criminal Possession of Dangerous Drugs with Intent to Distribute out of Montana's Seventh Judicial District Court. (Doc. 1).

Pending before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendations on Orcutt's petition. (Doc. 13). Judge Cavan recommends this Court deny Orcutt's habeas petition on the merits. (Doc. 13 at 22). Specifically, Judge Cavan held that Orcutt did not make a convincing showing of innocence, and the claim is not cognizable in habeas. Judge Cavan also determined that Orcutt's claims of ineffective assistance of counsel and prosecutorial misconduct lack merit. (*Id* at 14-21). Orcutt filed timely objections

to the findings and recommendations, (Doc. 14), entitling him to de novo review.  
28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3).

Discussion of Orcutt's objections is unnecessary because he presents the same arguments he presented in his habeas petition. The Court has reviewed de novo Orcutt's claims and Judge Cavan's findings and recommendations and agrees with Judge Cavan in full. Therefore, for the reasons stated in Judge Cavan's findings and recommendations,

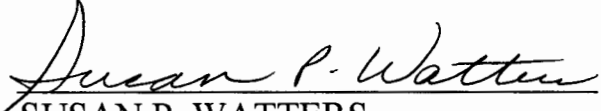
IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 13) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Orcutt's petition (Doc. 1) is DENIED on the merits.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

DATED this 25<sup>th</sup> day of September 2017.

  
SUSAN P. WATTERS  
United States District Judge